

## **REMARKS**

Applicants have carefully reviewed the Office Action of April 11, 2008 in which claims 1-3, 5-9 and 16-26 are pending, claims 3, 7, 18, 22, 23 and 26 were withdrawn from consideration and claims 1, 2, 5, 6, 8, 9, 16, 17, 19-21, 24 and 25 were rejection. Favorable consideration is requested in light of the following remarks.

### ***Claim Amendments***

Claims 1 has been amended to recite with more particularity the “retrieval means” of claim 8, and claim 8 has been cancelled. Claim 9 has been amended to depend from claim 1 rather than the now-cancelled claim 8. Claims 33-36 have been added. Support for the amendment may be found, for example, in claim 16 and in Figure 9. Support for the added claims may be found, for example, in Figure 9 and in paragraphs 16, 52 and 54 of the published application. No new matter has been added.

### ***Claim Rejections—35 U.S.C. § 103***

Claims 1, 2, 5 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ravenscroft et al., U.S. Patent No. 6,007,558 (hereinafter “Ravenscroft”) in view of Whitcher et al., U.S. Patent No. 6,273,901 (hereinafter “Whitcher”). Applicants respectfully traverse the rejection.

Neither Ravenscroft nor Whitcher disclose a retrieval apparatus as claimed. Applicants cannot find in either reference, for example, a “retrieval apparatus including a tubular inner member configured to grasp the apical head” as recited in amended claim 1. As “the legal conclusion must be reached on the basis of the facts gleaned from the prior art”<sup>1</sup> and “all words in a claim must be considered in judging the patentability of that claim against the prior art,”<sup>2</sup> the legal conclusion of obviousness cannot be reached based on the cited references. Applicants therefore submit that no prima facie case of obviousness has been made and that the claim 1 is in condition for allowance. As claims 2, 5 and 6 depend from claim 1 and contain additional elements, applicants submit that these claims are in condition for allowance as well.

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<sup>1</sup> MPEP 2142

<sup>2</sup> MPEP 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)

Claims 8 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ravenscroft in view of Whitcher as applied to claim 1 and further in view of Ostrovsky et al., U.S. Patent No. 6,447,530 (hereinafter “Ostrovsky”). Applicants respectfully traverse the rejection because the cited references do not support a conclusion of obviousness after consideration of all the words in the claim.

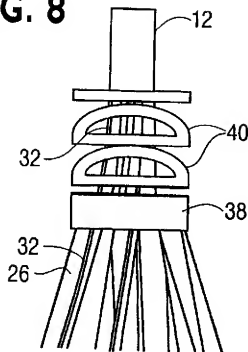
The retrieval apparatus of claim 9 (claim 8 has been cancelled) includes “a tubular inner member configured to grasp the apical head.” In contrast, the retrieval means of Ostrovsky use a loop 96 to grab a member 68 and draw it into an actuating device 98. This assembly is then pushed distal to unseat and collapse positioning portion 82. An outer tube 102 is then advanced to collapse the filter. None of the references, therefore, disclose using a tubular inner member to grasp an apical head.

Because the cited references do not support a conclusion of obviousness after consideration of all the words of the claim, a prima facie case of obviousness has not been made. For at least this reason, applicants submit that claim 9 is in condition for allowance.

Claims 16, 17, 20, 21 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ravenscroft in view of Ostrovsky. Applicants respectfully traverse the rejection because the cited references do not support a conclusion of obviousness after consideration of all the words in the claim.

Element 38 of Figure 8 of Ravenscroft is cited as the hub and tubular element 98 of Ostrovsky is cited as the middle tubular member. However, tubular element 98 cannot be “a middle tubular member configured to engage the hub because, as shown by Figure 8 reproduced below, it is not physically possible for hub 38 to be engaged by a tubular member. The base of element 12 is the same diameter as hub 38, which prevents any tubular member that can pass over element 12 from engaging hub 38.

**FIG. 8**



For at least this reason, applicants submit that the cited references do not support a conclusion of obviousness after consideration of all the words of the claim and, therefore, no *prima facie* case of obviousness has been made. Applicants respectfully submit that claim 16 is in condition for allowance. For at least the reason that claims 17, 20, 21 and 25 depend from claim 16 and contain additional elements, applicants submit that these claims are in condition for allowance as well.

Claim 19 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ravenscroft in view of Ostrovsky as applied to claim 16 above and further in view of Whitcher. Applicants respectfully traverse the rejection.

For at least the reason that claim 19 depends from claim 16 and contains additional elements, applicants submit that this claim is in condition for allowance as well.

Claim 24 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ravenscroft in view of Ostrovsky as applied to claim 16 above and further in view of Herbert et al., U.S Patent No. 6,482,221 (hereinafter "Herbert"). Applicants respectfully traverse the rejection because there is no rationale based on these references that would sustain a conclusion of obviousness,

nor would the application of the rationale proposed in the Office Action result in the claimed invention.

The Examiner's proposed rationale of making the inner member of the retrieval device of a braided material is "to provide varying flexibility to assist in the navigation of tortuous lumens during implantation or removal of the device. Inner member 96 of Ostrovsky has a loop at its distal end. So far as applicants can tell, Ostrovsky does not teach using this inner member to assist in navigation nor can applicants think of any instances where such a looped member could be used to assist in navigation. Trying to advance a member having a loop at its distal end by itself through tortuous lumens is at best, an exercise in frustration. Alternately, if the looped member is advanced within the retrieval apparatus, making of a braided material adds nothing to the navigability of the overall device.

Further, making inner member 96 of Ostrovsky of a braided material as suggested does not make it into a braided tubular member. Braids need not be hollow (e.g. plaited hair, or a rope). And because inner member 96 has a loop at its distal end, even if it were hollow, it would not be a tubular member because it would not have a distal opening.

For at least these reasons, applicants submit that a prima facie case of obviousness has not been met and that claim 24 is therefore in condition for allowance.

Applicants further submit that newly added claims 33-36 are in condition for allowance for at least the reason that they depend, directly or indirectly, from claim 16, which applicants submit is allowable, and contain additional elements.

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that the claims are now in condition for allowance, issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

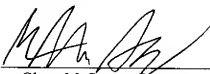
Respectfully submitted,

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By their attorney,

Date:

Oct. 9, 2008



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